

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

FLOREE DILLON

Claimant

VS.

BRANDON WOODS RETIREMENT CTR.

Respondent

AND

LIBERTY MUTUAL INSURANCE

Insurance Carrier

Docket No. 268,615

ORDER

Respondent and its insurance carrier (respondent) request review of the July 19, 2007 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

The Administrative Law Judge (ALJ) denied respondent's request to terminate all benefits reasoning that the "[c]laimant is still being treated, in part, for depression related to pain in her left knee which was a work related injury".¹ Thus, she was entitled to continued medical treatment and weekly benefits.

Respondent contends, based upon Dr. Pronko's recent opinion, that claimant's present symptoms of depression are not attributable to claimant's work-related 2000 accident. Rather, they are causally related to claimant's 2001 intervening accident as well as other stressors in her life. Thus, the ALJ's Order should be reversed and respondent should be allowed to terminate medical and temporary total disability benefits.

Claimant argues the ALJ appropriately rejected respondent's request and the Order should be affirmed.

¹ ALJ Order (July 19, 2007).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the undersigned Board Member makes the following findings of fact and conclusions of law:

This is the second time this precise issue has come before the Board. The only difference between the first presentation of evidence and this subsequent hearing is additional testimony from the claimant², additional medical records from Bert Nash Mental Health Center³ and a report from Dr. Pronko.⁴ There is no dispute that claimant suffered a compensable accident on October 24, 2000. There is likewise no dispute that she has been diagnosed with depression. The cause of that depression is at the heart of the parties' dispute.

Dr. Pronko, a psychiatrist, authored a report which reflects his opinion that "[t]here is no causal connection between her current state of depression and dysfunction and the original injury at Brandon Woods nursing home."⁵ He bases this conclusion on the fact that claimant was injured on October 24, 2000 and the onset of her depression was not until February 2002, following another injury in December 2001. According to Dr. Pronko, to causally link a depressive reaction to an injury such a response should occur within a year of the initial injury. Moreover, Dr. Pronko concluded that claimant has a multiplicity of social, financial and family factors which tie into her emotional dysfunction.

Dr. Pronko's report was shared with Julianne Boydston, claimant's psychologist who disagrees with Dr. Pronko's underlying assertion about the onset of claimant's symptoms of depression. Ms. Boydston noted:

According to records from Bert Nash CMHC, Ms. Dillon received an intake 5/22/02 and that was when she was given the initial diagnosis of Depression related to her injury and resulting loss of work. Ms. Dillon was referred to Bert Nash after a doctor commented on her psychological reactions during a surgery. She has not received any treatment before this point and in fact was unfamiliar with psychological treatment. *Just because this is the date Ms. Dillon received the diagnosis does not mean that is the onset of the diagnosis. In fact, Ms. Dillon reported then and reports now that she had been experiencing depressed feelings following the accident that continued to worsen as she had more and more difficulties working and was referred to surgeries and came to a crisis point with the intake.* Therefore, I believe that the onset of the problem is earlier than Dr. Pronko claims and is in fact very

² P.H. Trans. (July 17, 2007) at 5-27.

³ *Id.*, Cl. Ex.1-2 and Resp. Ex. D.

⁴ *Id.*, Resp. Ex. A & B.

⁵ *Id.*, Resp. Ex. B at 12 (Dr. Pronko's report dated Aug. 31, 2006).

much related to the initial injury. I state this with a reasonable degree of medical certainty.⁶

The ALJ concluded “[c]laimant is still being treated, in part, for depression related to pain in her left knee which was a work related injury.”⁷ Obviously the ALJ was persuaded by Ms. Boydston’s opinions over those offered by Dr. Pronko.

After considering the entire record, including those medical opinions and records offered in the earlier preliminary hearing as well as the more recent medical evidence, this Board Member finds the ALJ’s preliminary hearing Order should be affirmed. Ms. Boydston’s position that claimant’s depression existed before her diagnosis is well taken. Claimant has testified that she had those depressive feelings just after her initial work-related accident but merely did not want to voice them, nor was she particularly willing to given the fact that she was the sole bread winner for her family. It was only after the physicians brought up the issue that she resolved to seek treatment.

Under these facts and circumstances, this Board Member finds the ALJ’s preliminary hearing Order is appropriate and is hereby affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.⁸ Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to the entire Board in appeals of final orders.

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Brad E. Avery dated July 19, 2007, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of September, 2007.

BOARD MEMBER

c: Stephanie J. Haggard, Attorney for Claimant
John R. Emerson, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge

⁶ *Id.*, Cl. Ex. 1 at 1-2.

⁷ ALJ Order (July 19, 2007).

⁸ K.S.A. 44-534a.